



# HOUSE MAJORITY OFFICE

# MESSAGE POINTS

Representative Carlos Lopez – Cantera, Majority Leader

## ***Court Reform***

### ***CS/HJR 7111 Supreme Court & CS/HB 7199 Supreme Court; HB 7101 Judicial Nominating Commissions***

The House Joint Resolution and Implementing Bill propose an amendment to the Constitution to make substantive reforms to Florida's judicial branch. HB 7101 makes statutory revisions to the constitutionally required Judicial Nominating Commissions. The Court Reform package will increase judicial efficiency, transparency, and accountability by making multiple changes to the current court system.

The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the November 2012 general election. A joint resolution must be passed by a three-fifths vote of the membership of each house of the Legislature.

### ***Key Points***

The proposed court reform:

- Creates a stronger check on the judicial branch by giving the Legislature the authority to repeal a court rule with a majority vote.
- Increases accountability in the Judicial Qualifications Commission (JQC) by allowing the Speaker of the House to request the House of Representatives review its investigative files in order that the House may better perform its constitutional duties relating to oversight and impeachment.
- Increases efficiency in the administration of justice by creating a criminal and civil division of the Supreme Court.
- Increases accountability by requiring the Senate to confirm gubernatorial appointments to the Supreme Court.
- Ensures accountability for judicial appointments by making the Governor, who is directly accountable to the people, solely responsible for his judicial appointments.

#### **LAST SEEN:**

**All bills passed favorably out of the Judiciary Committee.**



#### **CURRENTLY:**

**On Special Order for Thursday, April 14, 2011**



#### **HEADED TO:**

**3<sup>rd</sup> Reading**

**Friday, April 15, 2011**



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## **Discussion Points:**

### ***Court Rule Adoption Procedure***

#### **The proposed court reform:**

- Retains the court's rulemaking authority but creates a stronger check on the judicial branch by giving the Legislature the authority to repeal a court rule with a simple majority vote and by general law expressing the policy for repeal.
  - Currently, a two-thirds vote is required to repeal a court rule, and even then the Court can disregard the repeal, claiming jurisdiction over the repealed rule.
- Protects the court's rulemaking authority by allowing the court to readopt a repealed rule in accordance with the expressed legislative policy.
  - If the readopted rule is repealed again by general law, it cannot be readopted.
- Does not affect the ability of any court to interpret the law.

### ***Judicial Qualifications Commission Oversight***

The Judicial Qualifications Commission (JQC) is an independent body within the judicial branch. The purpose of the JQC is to investigate complaints against justices and judges and to recommend that the Supreme Court discipline a justice or judge when appropriate. The Constitution provides that all investigative files of the JQC are confidential and exempt from public disclosure. This is done to prohibit a chilling effect on individuals with legitimate claims who fear judicial retribution. Files are open only when formal charges are filed, and even then, only the trial portion of the file is subject to public disclosure. Accordingly, there is no way to audit the performance of the JQC, and the Legislature does not have the means to verify whether the JQC is acting appropriately regarding complaints that are dismissed or handled through a private reprimand, or whether an impeachment should be pursued.

The Constitution currently requires the JQC, on request of the Speaker of the House, to make all information in its possession available for use in consideration of impeachment.

#### **The proposed court reform:**

- Increases accountability in the judicial branch by allowing the Speaker of the House to request the investigative files of the Judicial Qualifications Commission (JQC) to be reviewed by the House of Representatives at any time.
  - Currently, the Speaker of the House can only request a specific file in a specific case, prohibiting oversight on the actions of the JQC and allowing for little accountability for judicial investigations.



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- This proposed legislation does not affect the ability of the courts to remain unbiased and independent in court rulings. Historically, the JQC has taken the position that a judicial decision, right or wrong, is not grounds for discipline, and this proposed legislation does not require any change in this policy.
  - Most claims are dismissed outright, and the JQC claims that it deals with few cases of actual misconduct.
  - There is no way to confirm the reasons for the dismissal of nearly all of their complaints, as investigative files are currently confidential, and no oversight of the JQC exists.

## ***Civil and Criminal Divisions of the Supreme Court***

**The current process of conducting state post-conviction reviews in death penalty cases is plagued with significant delays, which postpone the administration of justice.**

**The proposed court reform:**

- Creates two divisions within the Supreme Court, a civil division and a criminal division, to increase the efficiency of the judicial branch in the administration of justice.
- Reduces the workload of the Supreme Court.
  - Post-conviction death penalty cases account for only approximately 12% of the Supreme Court's caseload but approximately 50% of the workload.
  - By creating one division with civil jurisdiction and one division with criminal jurisdiction, each would be better equipped to resolve cases in a timely and efficient manner.
- Increases judicial efficiency in the administration of justice in criminal cases by capitalizing on the expertise of judges specialized in the field of criminal law.
- Increases judicial efficiency in the administration of justice in civil cases by removing the overburdening death penalty cases from the civil court's workload.
- Helps streamline the administration of justice for victims and closure for a victim's family.
- Enhances efficiency and provides clarity by defining jurisdiction in the Constitution.
  - If an issue is not specifically defined in the Constitution, the Legislature may further define jurisdiction by general law.
  - If there is any conflict, the Chief Justice of the Supreme Court resolves the conflict.
  - Both divisions will have jurisdiction over court administration, rulemaking, and disciplinary action.
- Creates equality between the divisions by rotating the Chief Justice of the Supreme Court between the civil and criminal divisions in four-year terms.
- Allows the Governor to appoint a Chief Justice for each division.



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- Removes the jurisdictional prerequisite that an express and direct conflict exist between the DCAs or the Supreme Court on the same question of law.
  - This will allow the Supreme Court to provide greater clarity and stability on legal issues where the current law is unclear, creating greater efficiency in determining court decisions at the lower levels.

## ***Senate Confirmation of Supreme Court Justices***

Under current law, the Governor must appoint justices of the Supreme Court and judges of the district courts of appeal from a list of nominees provided by the appropriate judicial nominating commission. There are separate judicial nominating commissions for the Supreme Court and each of the district courts of appeal. The Legislature is not involved in this process. By contrast, the President of the United States appoints federal justices and judges subject to confirmation by the United States Senate.

### **The proposed court reform:**

- Increases accountability in the judicial nominating process by requiring the Florida Senate to confirm the Governor's appointments to the Supreme Court.
- Creates stronger checks on the executive and judicial branches by requiring confirmation of the Governor's appointments to the Supreme Court by the Florida Senate.
- Increases judicial and executive oversight by allowing the Senate 90 days to vet and confirm Supreme Court nominees.
  - If the Senate fails to vote on the nomination within 90 days, the judicial appointment would be automatically confirmed.
- Limits appointment delays of Supreme Court Justices, thereby reducing the occurrence of vacancies.
  - The Senate may by its rules designate a committee of senators to decide on confirmations.



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## ***Judicial Nominating Commissions***

### ***HB 7101***

In Florida, all appellate judgeships and trial court judgeships that become vacant during a judge's term are filled through a system of nomination and appointment. The nomination and appointment power is divided between the Governor and constitutionally created bodies called judicial nominating commissions (JNCs). There are separate JNCs for the Supreme Court, each District Court of Appeal, and each of the twenty judicial circuits. Although the Florida Constitution requires JNCs, the composition of each JNC is provided for by statute.

Current law provides that five of the nine members of each JNC are appointed directly by the Governor, and the other four are appointed by the Governor from a list of nominees provided by The Florida Bar. The bill ensures accountability for judicial appointments by making the Governor, who is directly accountable to the people, solely responsible for judicial appointments. It adds transparency to an obscure system by removing members from the judicial nominating commissions who are not solely selected and appointed by an elected official responsible to the public.

#### **The proposed court reform:**

- Ensures accountability for judicial appointments by making the Governor, who is directly accountable to the people, solely responsible for his judicial appointments.
- Leaves the JNC in the Florida Constitution but changes its composition and operation to create greater accountability to the public.
- Allows for the Governor to make appointments for all existing judicial nominating commissions. Current members may be reappointed.
- Adds transparency to an obscure system by removing members from the judicial nominating commissions who are not solely selected and appointed by an elected official responsible to the public.
- Creates greater executive accountability for judicial appointments by appointing JNC members to terms concurrent with that of the Governor.
- Reduces the number of members on each Judicial Nominating Commission from nine to seven members.